




MEMORANDUM

January 7, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Approval of Cost Reimbursement Agreement between the Port and Pacific Gas and Electric Company for Management of Residual Petroleum Hydrocarbons on Port Property within the shoreline and submerged land near the former Potrero Power Plant Site and Pier 70 in San Francisco

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-04

EXECUTIVE SUMMARY

Beginning over 100 years ago, predecessors of Pacific Gas and Electric Company (PG&E) operated a coal-powered manufactured gas plant (MGP) at the former Potrero Power Plant site. PG&E and its predecessors' operations contaminated soil and sediment with polycyclic aromatic hydrocarbons (PAH), a byproduct of the combustion of petroleum. This contamination impacted the Port-owned shoreline east of the former power plant property from the southern end of the power plant property northward into the southeastern corner of the Port's Pier 70 area. The contamination also impacted the sediment in submerged lands along the shoreline, from the southern end of the former power plant property to the northern boundary of Pier 70 (see Exhibit A).

Under a voluntary cleanup agreement with the San Francisco Bay Regional Water Quality Control Board ("Water Board"), PG&E has completed site investigation, risk assessment and remediation of PAH contamination. The Water Board has determined that contamination has been substantially treated or removed and that remaining residual contamination can be safely managed on-site by implementing appropriate land use restrictions and risk management measures. These risk management measures,

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documented in an approved Risk Management Plan (RMP) and Risk Management and Monitoring Plan (RMMP; collectively, Risk Management Plans), include controls such as additional project-specific agency review, worker health and safety measures, soil management measures, and monitoring and reporting requirements for new construction and on-going operation and maintenance of improvements.

When disturbing soils and sediments in the areas with residual contamination the Port, its tenants, licensees, development partners, or their agents (collectively, Port and Port-authorized users) are required to implement the risk management measures. PG&E and Port staff have negotiated a Cost Reimbursement Agreement through which PG&E would reimburse the Port and Port-authorized users for additional costs incurred to implement risk management measures or other costs attributable to residual contamination. The Cost Reimbursement Agreement establishes conditions and procedures under which PG&E would reimburse up to \$5 Million of costs, during a term of up to 20 years, after which time the Port and PG&E agree to extend the agreement or negotiate a new one that serves the same purpose. Port will not waive any claims under the Cost Reimbursement Agreement. Port staff recommends that the Port Commission approve the proposed Cost Reimbursement Agreement, subject to Board of Supervisors' approval.

Strategic Objectives

Execution of the Cost Reimbursement Agreement would support the following objectives of the Port's 2021-2025 Strategic Plan:

- **Sustainability: Protect the Bay and its ecosystems.** PG&E has remediated contamination beneath the Port-owned shoreline and in sediment along the shoreline of Pier 70 and the former Potrero Power Plant site. This remediation will protect water quality and prevent impacts to aquatic life and people using the bay and shoreline. Management of the residual contamination will ensure long term effectiveness of the remediation.
- **Economic Recovery: Identify and implement expenditure reductions, revenue enhancements, operational efficiencies, and external funding sources.** The Cost Reimbursement Agreement provides an external funding source to offset any Port expenditures required to implement long term management measures by establishing a mechanism for the Port, its tenants, licensees, or other authorized users of Port property to seek reimbursement from PG&E. By establishing a process for Port and other users to be reimbursed for any operational, emergency response, or development costs related to the presence, remediation, and/or management of contamination from PG&E's historic operations, the Cost Reimbursement Agreement ensures that PG&E retains financial responsibility for remediation.

History and Current Land Uses/Development

The Potrero Power Plant Site (Potrero Site) is located on privately-owned land bordered by San Francisco Bay to the east, 23rd Street to the south, Illinois Street to the west,

and the Port's Pier 70 Area to the north (Exhibit B). The Potrero Site was occupied for industrial use beginning in the mid-1800s. Historic uses included ship building and repair, metal foundries, sugar refining, barrel manufacturing, gas manufacturing, and power generation by a steam electric plant. Beginning in the 1870s, City Gas Company operated an MGP, which burned coal and oil to produce a form of natural gas, in the northern portion of the property, where the Potrero Site abuts Port property. PG&E acquired the MGP in 1906 and operated it until 1930. PG&E dismantled the MGP in the early 1960s but continued to operate a natural gas-powered electricity generating plant until power generation at the Potrero Site ceased permanently in 2011. PG&E sold the Potrero Site to Southern Energy, a predecessor to NRG Potrero, LLC, in 1999. California Barrel Company LLC (CBC) acquired the property in 2016. It is currently being redeveloped by CBC as a mixed-use development, including construction of open space on Port-owned lands.

The Port's Pier 70 Area (Pier 70) comprises approximately 65-acres bounded by Mariposa Street to the north, Illinois Street to the east, 23rd Street and the Potrero Site to the south, and San Francisco Bay to the east and north (Exhibit B). Since the 1890s, Pier 70 was occupied for industrial use by companies including Union Iron Works, Bethlehem Steel, Todd Shipyards, Risdien Iron Works, Southwest Marine, SF Drydock, and the United States Navy. Industrial activities included manufacture, maintenance, and repair of vessels, and supporting operations such as administration and engineering offices, metal foundries, galvanizing shops, warehouses, paint shops, plating shops, small power generating units such as boilers and transformers, dry docks, and lumber and steel lay down yards.

In 2010, after a multi-year planning process, the Port issued the *Pier 70 Preferred Master Plan*, which envisioned continued ship repair in the former BAE San Francisco Ship repair facility and redevelopment of the rest of Pier 70 for mixed commercial, light industrial, residential, and recreational use. Rehabilitation and reuse of historic buildings by Orton Development, the Port's construction of Crane Cove Park, and ongoing construction of the 22-acre "Pier 70 SF" mixed use development by Brookfield Properties Development have realized much of the vision for Pier 70.

Regulatory Background and Site Cleanup

Between 2009 and 2013, under regulatory oversight by the Water Board and the City and County of San Francisco Department of Public Health (SFDPH), the Port investigated hazardous materials in soil, groundwater, and soil gas throughout the upland area of Pier 70. That investigation found that soil at Pier 70 is contaminated with metals, naturally occurring asbestos, and petroleum hydrocarbons at concentrations typical of the fill that comprises much of the Port's shoreline. These materials tend to bind to soil, are not very soluble or volatile, and were not found dissolved in groundwater or present in soil vapor at concentrations that warranted active remediation. The Water Board approved a remedy to address contaminants at Pier 70 that consists of capping soil and managing the site with long-term risk management measures specified in an approved "*Pier 70 Risk Management Plan*".

Between 2006 and 2019, PG&E, under regulatory oversight by the Water Board and, for upland parcels, SFDPH, investigated and remediated contamination at the Potrero site, the southeastern portion of Pier 70 contaminated by the adjacent Potrero Site, and the shoreline and submerged sediment along the Potrero Site and Pier 70. Investigations found all of these areas to be impacted by contaminants related to historic MGP operations, primarily PAHs. PAH are complex hydrocarbon compounds that are less likely than lighter weight hydrocarbons such as those found in diesel fuel or gasoline to be in a vapor phase or released to air, and they are not prone to dissolve in water, particularly if already bound to carbon-based compounds in soil. Consequently, they can be, and, under appropriate conditions, often are treated and/or managed in place without posing on-going risk to human health or the environment.

PG&E's investigation of the upland and intertidal soil, and subtidal (submerged) sediment along the shoreline of the Potrero Site and Pier 70 found PAH contamination in the following three areas (see Exhibit A), which are identified based on tidal location, degree of contamination, remediation status, and land use:

- **Shoreline Area:** Approximately 1.1 acres of Port-owned upland (above Mean High Tide Line) along the shoreline east of the Potrero Site, from the south end of the Potrero Site northward into the southeastern corner of Pier 70. It includes a North Shoreline Area and a South Shoreline Area, separated by private property, all of which will be developed for public access and outdoor recreation. Investigation of the Shoreline Area found that PAH-contaminated soil could be safely remediated and managed in place. Remediation consisted of soil solidification and placement of protective cap over remediated soil. This remediation sequesters PAHs in soil, prevent people from having contact with PAH-impacted soil, and prevent PAHs from being released to water or air, either as dust or by migrating into indoor air¹².
- **Offshore Sediment Area:** Approximately 27.5 acres of intertidal and submerged land extending from the eastern edge of the Shoreline Area eastward into San Francisco Bay. Investigation of the Offshore Sediment Area found that PAH concentrations decreased with distance from the shoreline, and the Water Board approved appropriate remedial approach based on degree of contamination nearshore (from the shoreline east approximately 50 to 75 feet) and in a transition zone (extending another 100 to 150 feet east into the bay), east of which concentrations of PAHs in sediment are consistent with ambient concentrations in Central San Francisco Bay³. PG&E completed remediation consisting of various combinations of dredging, in-situ treatment, and placement of a sediment cap.⁴

¹ *Summary of Investigation and Remedial Activities, Port of San Francisco-Owned Areas*, Haley and Aldrich, 2019.

² *Remedial Action Completion Report Northeast Area of the Potrero Power Plant Site and a Portion of the Southeast Area of Pier 70*, Haley & Aldrich 2019.

³ *Remedial Action Plan, Offshore Sediment Area, Potrero Power Plant Site*, Haley & Aldrich, 2017.

⁴ *Remedial Action Completion Report, Offshore Sediment Area*, Terra Pacific Group, 2020.

- **Extended Area:** Approximately 1.7 acres of submerged land north of the Offshore Sediment Area. Sediment in the Extended Area contains PAHs at concentrations consistent with those found in sediment throughout central San Francisco Bay and does not require remediation. It is included with the other areas subject to long-term management requirements to ensure that project-specific activities that may be proposed in the future are evaluated for potential to change the current determination that remediation is not warranted.

The Water Board approved remediation of the Potrero Site in phases between 2016-2020, the impacted portion of Pier 70 in 2020, and intertidal soil and subtidal (submerged) areas in 2020. Remediation substantially removed or sequestered PAH contamination and virtually eliminated risk that any remaining PAHs could migrate. However, some residual contamination will remain in soil and sediment in the shoreline and offshore sediment areas described above. The Water Board approved PG&E's human health and environmental risk assessment and found that management of residual contamination remaining after remediation has been completed does not pose a significant risk to Bay water quality or aquatic life or to current or future occupants or visitors provided that long-term land use restrictions and risk management measures are implemented.

Land Use Restriction and Risk Management Measures

The Water Board requires Port to enter a Land Use Covenant for the portions of Port-owned shoreline and offshore sediment described above to ensure that the remediation remains effective over time. Land Use Covenants are commonly-used regulatory tools to provide notice and impose restrictions and long-term management measures. The prohibitions and restrictions in the Land Use Covenant for this site have been reviewed by Port and CBC and are compatible with anticipated development plans. The land use restrictions are specified in a recorded Land Use Covenant binding on the Port and users and occupants of the affected property that:

- Prohibit extracting groundwater for any use, growing edible items for human consumption in native soil, or constructing or placing an enclosed building in direct contact with soil.
- Require compliance with risk management plans.
- Prohibit any action that may affect the integrity of the cap, increase exposure to residual contamination, or exacerbate existing contamination.
- Require advance notification to and approval from environmental regulatory agencies prior to undertaking soil- or sediment-disturbing activities or change in land use.

The Port or Port-authorized party may request project-specific variance from the Land Use Covenant or termination of certain restrictions or other terms of the Land Use Covenant. Otherwise, the Land Use Covenant will remain in effect in perpetuity.

Required risk management measures vary between the subject areas and are described in detail in the Risk Management Plans for the shoreline⁵ offshore sediment⁶. They include, for example:

- Implementation of measures to prevent workers' or public exposure to soil, soil vapor and groundwater during construction or maintenance.
- Inspection and maintenance of cap or durable cover over site soil to ensure that such cover remains effective at preventing exposure or disturbance of soil or sediment.
- Procedures for addressing unanticipated conditions that might be discovered during future construction or redevelopment.
- Port, PG&E, and regulatory agency review of any proposed soil- or sediment disturbing activity within the impacted areas to evaluate whether the proposed work may be affected by soil or sediment conditions and how the project will implement appropriate risk management measures.

The Port or Port-authorized users of the shoreline and offshore sediment along the Potrero Site and Pier 70 are required to implement the risk management measures that apply to those areas. On the adjacent Potrero Site, CBC has executed a similar Land Use Covenant with similar restrictions and requirements.

Potential Future Costs of Contamination

The Port or Port-authorized users may incur additional costs to construct new or maintain existing improvements to comply with the Land Use Covenant and Risk Management Plans. Such costs include but are not limited to:

- Costs associated with additional notice, permitting and agency approval that would not be required in the absence of residual contamination remaining on Port property.
- Soil or sediment sampling and analysis that may be required to evaluate projects' potential impacts on residual contamination.
- Cost of supplemental materials that would not have been required if soil or sediment impacted by residual contamination was not contaminated and could be reused.
- Additional training, protective equipment, personnel monitoring, or other measures to protect workers' health and safety.
- Regulatory agency oversight fees and Port or its agents' administrative and professional services costs, including legal services, necessary to comply with the risk management plans.

Cost Reimbursement Agreement

Port staff, in consultation with the City Attorney's Office, has negotiated the proposed Cost Reimbursement Agreement ("Agreement") to establish a process for PG&E to reimburse Port and Port-authorized users for costs incurred to implement required risk

⁵ *Risk Management Plan Port-Owned Shoreline Areas Potrero Power Plant*, Terra Pacific Group, 2021.

⁶ *Risk Management and Monitoring Plan, Offshore Sediment Area, Potrero Power Plant Site*, Haley & Aldrich, 2020.

management measures in the Shoreline Areas and Offshore Sediment and Extended Areas as shown in Exhibit A. The Agreement applies to up to \$5 Million in reimbursements over a term of up to 20 years. If reimbursements reach \$5 Million before 20 years have passed or at the end of the 20-year term, the Agreement requires the parties to negotiate in good faith for an extension or replacement of the Agreement that would serve the same purpose.

Additional costs attributable to the presence of residual contamination that may be incurred by project proponents, such as the examples listed above, are likely to be in the tens of thousands of dollars for any single project or activity. The \$5 Million amount for the proposed Agreement is based on a conservative assessment of costs to implement the risk management measures considering anticipated development and on-going use of the shoreline and offshore areas and is intended to cover numerous projects or activities that might occur over the 20-year term. It also considers that the Agreement documents the Port and PG&E's intent to extend the Agreement or negotiate a similar agreement if such additional costs reach \$5 Million.

The Port has several similar existing agreements for other areas where residual contamination remains in place after an approved clean up. In 2006, the City executed a similar agreement with four oil companies who had formerly operated fuel terminals in the Mission Bay area to reimburse the City for costs incurred due to the presence of residual petroleum hydrocarbons left in place beneath approximately 12.4 acres of land in Mission Bay. In 2016, the Port executed a similar agreement with ExxonMobil regarding residual petroleum hydrocarbons left in place beneath approximately 130 feet of shoreline in Fisherman's Wharf in the vicinity of Wharf J10. To date, the Port has not incurred costs related to presence of residual contamination in either of those areas that qualify for reimbursement and therefore has not had reason to seek reimbursement under either agreement.

Following are the primary terms of the proposed Agreement:

Parties	The Agreement establishes a process through which the Port or its tenants, licensees, or other authorized user of Port property may seek reimbursement from PG&E for costs incurred to comply with the RMP or RMMP or other reimbursable costs as defined by the Agreement.
Term	The term is the earlier of 20 years or when PG&E has reimbursed a total of \$5 Million (automatically increased annually by two and one half percent (2.5%). The Agreement specifies that upon its expiration, the Port and PG&E will negotiate in good faith to extend the Agreement or enter into a new one that fulfills the same purpose of providing for PG&E's ongoing financial responsibility for long term management measures specified by the RMP and RMMP.

Reimbursable Costs	Reimbursable Costs are increased costs and expenses incurred by the Port or authorized user of Port property related to implementation of risk management measures and other costs that would not be incurred in absence of residual contamination remaining on Port property.
Pre-Authorization of Work	Except for emergency work, the Port or Port-authorized user proposing work that will disturb soil or sediment within the areas subject to the RMP or RMMP must request pre-authorization of reimbursable costs greater than \$10,000 by submitting a scope of work and cost estimate to PG&E.
Reimbursement	The Agreement sets forth a process for pre-authorization of proposed work and for reimbursement of costs by PG&E.
Dispute Resolution	The Agreement provides for mediation of disputes by a jointly designated mediator and with mediation costs split equally between the Port or Port-authorized Party and PG&E.
No Release	The Agreement does not release PG&E from any claims or liability or preclude the Port from seeking judicial remedies with respect to residual contaminants on Port property.

Board of Supervisors and City Approvals

The Agreement will require approval from the Board of Supervisors because the term is 20 years. City Charter Section 9.118 requires Board of Supervisors’ approval of agreements having a term of ten years or more.

Recommendation

Port staff recommends approval of the Cost Reimbursement Agreement between the Port and PG&E for Management of Residual Contamination on Port Property within certain areas east of Pier 70 and the former Potrero Power Plant.

Prepared by: Carol Bach, Environmental & Regulatory Affairs Manager
 Planning & Environment

For: Ming Yeung, Acting Deputy Director
 Planning & Environment

Attachments

- Exhibit A: Shoreline and Offshore Areas Subject to Cost Recovery Agreement
- Exhibit B: Pier 70 and Potrero Power Plant Site

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 22-04

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (“Water Board”) has regulatory authority to oversee environmental site investigation and remedial action within the Port area of the City and County of San Francisco; and

WHEREAS, Between 2006 and 2019 Pacific Gas and Electric Company (PG&E), under a voluntary cleanup agreement with the Water Board, completed site investigation, remedial action planning, and execution of remedial action to treat and remove polycyclic aromatic hydrocarbon contamination in upland and intertidal soil and subtidal sediment in the vicinity of the former Potrero Power Plant and Pier 70; and

WHEREAS, PG&E has assessed the potential human health and environmental risk and demonstrated to the satisfaction of the Port and the Water Board that any remaining residual hydrocarbons can be safely managed through implementation of long-term risk management measures specified by an approved Risk Management Plan (“RMP”) and Risk Monitoring and Management Plan (RMMP); and

WHEREAS, A recorded Land Use Covenant is required to ensure that the remediation remains effective and the RMP and RMMP remain in place;

WHEREAS, The Port and other users may incur additional costs to construct new or maintain existing improvements to comply with the Land Use Covenant and RMP and RMMP; and

WHEREAS, Port staff and PG&E have negotiated a proposed 20-year Cost Reimbursement Agreement (“Agreement”), as described in the Memorandum to the Port Commission dated January 7, 2022, that sets forth a process for the reimbursement of costs in an amount of up to \$5 Million that would not be incurred in the absence of the residual contamination within the areas covered by the RMP and RMMP;

WHEREAS, The Agreement does not release PG&E from any liability for residual contamination or otherwise; and now, therefore be it

RESOLVED that the Port Commission hereby approves the Agreement as described in the Memorandum dated January 7, 2022, and, subject to approval by the

Board of Supervisors, authorizes the Executive Director or her designee to take such actions (including the execution of the agreement) as she deems necessary and advisable, in consultation with the City Attorney, to effectuate this approval and the purpose and intent of this Resolution; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee to enter into any additions, amendments or other modifications to the Agreement that the Executive Director, in consultation with the City Attorney determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port or materially decrease the benefits to the City or Port, and are necessary or advisable to complete the transactions which the Agreement contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or her designee of the Agreement, and any such amendments thereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 11, 2022.

Secretary